IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/10/2003

CORAM

THE HONOURABLE MR.JUSTICE V. KANAGARAJ

CRIMINAL ORIGINAL PETITION No.22938 OF 2003
AND
CRL.M.P.Nos.6493 AND 6494 OF 2003.

1.Smt. Samatha @ Nikila
2.Mr.Sankar
3.Mr.Ramana Raddy ... Petitioners

-Vs-

K.Sathishkumar Reddy ... Respondent

Criminal Original Petition filed under Section 482 of Criminal Procedure Code for the grant of relief as stated therein.

!For Petitioners : Mr. M. Prabakaran

^For Respondent : No appearance

:O R D E R

The above Criminal Original Petition has been filed by the petitioners under Section 482 of the Code of Criminal Procedure praying to quash the proceedings against them in C.C.No.6267 of 2001 pending on the file of the Court of XVII Metropolitan Magistrate, Saidapet, Chennai.

2. The petitioners submit that the respondent has filed a complaint against them for the offences punishable under Section 138 read with Section 142 of the Negotiable Instruments Act for the dishonour of a cheque, stated to have been issued by the Managing Partner of M/s. Rohini Builders, who is the first accused; that the petitioners have been impleaded as accused 2 to 4 in the complaint alleging that they are in active participation for the conduct of business of the firm; that they are not the partners of the firm, bu t they have been impleaded as accused since they are the family members of A1 Banu Prasad Reddy; that there is no piece of documentary evidence shown in the complaint that they are the partners of the firm and in the absence of such averment, there is no necessity to shift the evidence during the trial and such evidence will not help the complainant to prove his case; that even as per statutory notice, the amount was due on January 1 997 and the alleged cheque was stated to have been issued on 9.4.2001 , and as per the above said fact, the cheque has been issued for a time barred debt. Hence, the complaint

cannot be maintained for the offences under Sections 138 and 142 of the Negotiable Instruments Act; that the petitioners have been added as accused with mala fide intentions, ulterior motive and to harass the petitioners. Hence, the petitioners have come forward with the above Criminal Original Petition for the relief extracted supra.

3. During arguments, the learned counsel appearing on behalf of the petitioners besides reiterating what has been pleaded in the petition would also cite three judgments from the decided cases respectively reported in:

1.1994-1-L.W.(Crl.) 135 (M.KRISHNAMOORTHY VS. B.S.KESAVAN)
2.2002(2) Crimes 638 (S.N.BANGUR & OTHERS vs. M/S.KLEN & MARSHALLS MFRS. & EXPORTERS PVT.LTD.)
3.2001 (2) Supreme 311 (K.P.G.NAIR VS. M/S.JINDAL MENTHOL INDIA LTD.)

4. The first order cited above is one which has been delivered in a criminal original petition by a single Judge of this Court regarding dishonour of cheque issued by the firm wherein only the partner has been arrayed as accused without the firm being arrayed and hence, the complaint was held liable to be quashed.

5. So far as the second order cited above is concerned, it is also an order passed by a single Judge of this Court in a criminal revision wherein expression has been given to the effect that `the presumption under Section 141(2) of the Negotiable Instruments Act against the Director, Manager etc. would arise only when it is proved that offence was committed with consent or connivance of or was attributable to any neglect on part of those persons.'

6. The third judgment cited is one by the Honourable Apex Court wherein it is held that `a person other than the company can be proceeded against under Section 138 of the Negotiable Instruments Act only if that person was in charge of and was responsible to the company for the conduct of its business.

7. Since on the date of hearing, no representation was offered on the part of the respondent, in spite of notice, this Court is left with no choice but to decide the above criminal original petition based on the arguments advanced on the part of the learned counsel for the petitioners and having regard to the materials placed on record.

8. On the part of the complainant, the respondent herein, though has simply stated in the complaint that these petitioners, who are accused No.2 to 4, are also the partners of the firm called M/s.Rohini Builders, neither the firm has been impleaded as a party nor has the complainant anywhere placed on record either the partnership deed of M/s.Rohini Builders or any other authenticated document either before this Court or before the Court below (as could be seen from the list of documents filed along with the complaint) for proper consideration that these petitioners are the partners of the said firm. On the contrary, the

petitioners would strongly contend that they are not the partners of the said firm at all and just for the simple reason that they are related to the first accused, in order to trouble them for obtaining wrongful gains, they have been falsely impleaded as accused to the complaint and therefore would pray to quash the C.C.No.6267 of 2001 so far as the petitioners are concerned.

9. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioners, what comes to be known is that the respondent/ complainant has not even impleaded the firm as the party of which the petitioners are alleged to be the partners and the first accused, the Managing Partner. So far as the cheque dealing that the parties had with which the firm or company or corporation is concerned, under the relevant provisions of the Negotiable Instruments Act particularly under Sections 141 and 142 of the said Act, the firm is a necessary party to the proceeding which is miserably missing in the complaint without which no proper decision could be arrived at since the firm is a `person' in the eye of law and could borrow or lend and could sue and be sued having its own personal identity and existence and since it is alleged that only for and on behalf of the firm, the cheque has been issued by the first accused, without the firm having been made a party, it is even difficult to proceed with the very complaint itself and hence needless to mention that at the outset itself, the complaint cannot be held to have been properly framed and projected.

10. Secondly, absolutely, no iota of evidence has been placed on record anywhere on the part of the respondent including the complaint or the notices said to have to been issued which have been placed in the typed set of papers to prima facie prove to the effect that these petitioners are partners of the said firm M/s.Rohini Builders and hence the case of the complainant/respondent, prima facie, has no bearing on these petitioners.

Simply making anyone as a party, the respondent cannot be permitted to torture innocent people unconnected to the issue as a method of squeezing and achieving his goal, which is impermissible in law.

11. Thirdly, it is an admitted case of the respondent that the petitioners have not issued the cheque in question and therefore in consideration of the facts and circumstances encircling the whole case projected by the respondent and giving effect to the judgments rendered by this Court and the Honourable Apex Court, as mentioned above, it is easy to arrive at the conclusion that the petitioners have no nexus or connection or bearing on the complaint lodged by the respondent and they become fully entitled to the legal protection, particularly for a remedy in exercise of the inherent powers of this Court conferred under Section 482 of the Cr.P.C., and hence the following order:

In result,
(i)the above criminal original petition succeeds and the same is allowed.
(ii)The case registered against the petitioners and taken on file in C.C.6267 of 2001 by the Court of XVII Metropolitan Magistrate, Saidapet, Chennai-15 is quashed, so far as the petitioners/A2 to A4 are concerned.

Consequently, Crl.M.P.Nos.6493 and 6494 of 2003 are closed.

Index: Yes
Internet: Yes

sl/Rao

To

The XVII Metropolitan Magistrate,
Saidapet,
Chennai-15.